IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-609

JOSEPH H. MORTON, ET AL., *Petitioners*

v.

CHARLES COUNTY BOARD OF EDUCATION, ET AL., *Respondents.*

PETITIONERS' REPLY MEMORANDUM IN SUPPORT OF CERTIORARI

Respondents' patent effort to factualize the clear legal issues presented by the Petition evidences their own recognition of the unusual significance of those legal issues. And it could not be otherwise, for it is incontestable that the District Judge applied the *wrong legal standards* to the facts before him.

All three legal issues raised by the Petition are clearly before the Court. Thus, the majority and dissenting opinions both expose the issue whether the District Court properly placed the burden on the plaintiffs rather than requiring defendants to justify their practices which indisputably sharply reduced the black

faculty component when student desegregation was undertaken in 1967. The equally clear question of law presented is whether a "discriminatory effect" or a "racial animus" standard applies to those School Board hiring and promotion practices which have had a strongly adverse impact on the employment of minority teachers and principals. And equally presented is the question whether the District Court could totally shrug aside the State of Maryland's own determinations and remedial orders addressed to the Charles County school officials' discriminatory hiring and promotion practices. Thus, respondents' attempt to defuse and diffuse the Petition through a factual justification of their conduct cannot vitiate the three central legal errors which tainted the District Court's resolution of this case.

Moreover, the School Board's factual recitation to this Court wholly fails in its attempt to undermine the points on which we base our petition for review:

(i) In attempting to explain the adoption of an annual hiring ratio of four whites to one black in a school system which had approximately equal racial representation before black teachers were first generally assigned to teach white students, respondents repeatedly cite inapposite and inconsequential facts. Thus, they rely (Opp. pp. 7-8, 11) on a decrease in the proportion of black Charles County *residents* and a decrease in the proportion of black *students* in the Charles County School System during the 1960s which are totally irrelevant to the hiring of *teachers*. Further they point (*id.*) to the low percentages of Charles County black residents who hold college degrees, which equally fail to justify the School Board's failure to hire blacks when, as the record shows, the teacher hires come from

more than half the states in the nation (A. 1225-26, 1231, 1235-38. See Petition p. 15 n.8).

(ii) Concerning the School Board's discriminatory recruitment policies, respondents' reliance (Opp. p. 11) on the conclusory satisfaction of the majority below with the Board of Education's recruitment efforts cannot gainsay the undisputed fact that the School Board's recruiting was at mostly white colleges with mostly white recruiters (see Petition, pp. 6-7, 10).

(iii) Concerning the undisputed evidence that the Charles County School System hired numerous whites with the lowest State qualifications while hiring virtually no blacks with such limited qualifications, it is no answer for respondents to rely (Opp. p. 11) on the District Court's statement that such persons were hired from the local area just before the school year opened. The uncontested record shows that 60% of all new hires were *usually* hired that late in the school year (A. 873-908), and there is no evidence that these hires were drawn only from the local area. The only relevant evidence is the the School Board in general hires applicants from the majority of states in the nation.[1]

All apart from respondents' attempt to cloud the salient facts in this case, it is clear that petitioners were entitled to have the District Court review those facts under the proper legal standards. There is no possible dispute that the District Court refused to shift the burden of justification to the School Board for its hiring and promotion practices which sharply reduced the

[1] Respondents' reliance on their teacher assignments after this action was commenced in the one year just prior to the 1973 trial (Opp. pp. 11-12) hardly undercuts the undisputed record that during the preceding *six years* the school system assigned teachers on a racially identifiable basis in the majority of its schools.

black faculty component immediately after the desegregation of the student bodies.[2] There is thus squarely presented the issue of whether *Keyes-Chambers* requires transfer of the burden where the School Board has utilized the more "sophisticated" means of refusing to hire blacks instead of engaging in outright discharges.

Similarly, it is clear that the lower courts disregarded Maryland's own findings that respondents engaged in discriminatory employment practices and the State's orders to correct those practices.[3] The important issue whether the lower courts should have honored and given effect to the State's own action is thus clearly presented.

Also squarely raised is the lower courts' use of the motivation standard instead of the *Wright* "effect" test. Here the Charles County Board repeats (Opp. p. 14) its specious argument to the Court of Appeals that because the District Court found no "pattern of discrimination" the District Court applied an "effect" standard. But the majority of the Court of Appeals failed to accept respondents' assertion and

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[2] Respondents quibble (Opp. p. 14) that there is no "history of segregation" here because the School Board had adopted a freedom of choice plan for some years prior to 1967. But that program was totally ineffective, and the token transfers of a few blacks to white schools and a few whites to black schools in no way refute the undisputed fact that the student bodies and faculties remained essentially segregated until 1966 and 1967.

[3] While Respondents attempt (Opp. p. 8) to disparage the findings of the State Board's Committee because of the Committee's informal procedures —which Charles County itself had suggested—those findings were in fact the premise of the State Board's remedial orders.

do not at all suggest that the District Judge applied the effect standard. Moreover, a careful reading of the District Court's opinion exposes its application of the erroneous racial animus test (see Petition, pp. 23a, 24a, 27a, 29a, 34a, 36a, 40a-42a, 45a-47a, 49a). As dissenting Judge Butzner states, the District Court's Opinion contains "a basic error of law that flaws this case: the fallacious premise that the evidence must reveal purposeful discrimination in order for the complainants to prevail" (Petition, p. 12a).

In short, this case raises three vital legal issues which require grant of the writ.

Respectfully submitted,

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